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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
ALBUQUERQUE DIVISION**

ALBINO GONZALES,

Plaintiffs,

v.

CAPITAL ONE BANK (USA) N.A.,

Defendant.

Case No.

**PLAINTIFF'S COMPLAINT FOR
DAMAGES
(Unlawful Debt Collection Practices)**

COMPLAINT

ALBINO GONZALES ("Plaintiff"), by his attorneys, alleges the following against
CAPITAL ONE BANK (USA), N.A. ("Defendant"):

1. Plaintiff brings this action on behalf of himself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act (hereinafter "TCPA"), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. Defendant conducts business in the state of New Mexico, and therefore, personal jurisdiction is established. Venue is proper pursuant to 28 U.S.C. 1391(b)(2).
3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3). See, *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012), holding that federal and state courts have concurrent jurisdiction over private suits arising under the TCPA.

- 1 4. Venue is proper in the United States District Court for the District of New Mexico pursuant
2 to 28 U.S.C § 1391(b) because Plaintiff resides within this District and a substantial part
3 of the events or omissions giving rise to the herein claims occurred, or a substantial part
4 of property that is the subject of the action is situated within this District.

5 **PARTIES**

- 6 5. Plaintiff is a natural person residing in the county of Bernalillo in the city of Albuquerque,
7 New Mexico and is otherwise *sui juris*.
8 6. Defendant is a Virginia corporation doing business in the State of New Mexico.
9 7. At all times relevant to this Complaint, Defendant has acted through its agents, employees,
10 officers, members, directors, heir, successors, assigns, principals, trustees, sureties,
11 subrogees, representatives and insurers.

12 **FACTUAL ALLEGATIONS**

- 13 8. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged
14 debts owed by Plaintiff.
15 9. Defendant placed collection calls to Plaintiff's cellular telephone at phone number (505)
16 234-27XX.
17 10. Defendant places collection calls to Plaintiff from phone numbers including, but not
18 limited to, (800) 955-6600.
19 11. Per its prior business practices, Defendant's calls were placed with an automated telephone
20 dialing system ("auto-dialer").
21 12. Defendant used an "automatic telephone dialing system", as defined by 47 U.S.C. § 227(a)
22 (1) to place its telephone calls to Plaintiff seeking to collect a consumer debt allegedly
23 owed by Plaintiff, ALBINO GONZALES.
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1 13. Defendant's calls constituted calls that were not for emergency purposes as defined by 47
2 U.S.C. § 227(b)(1)(A).

3 14. Defendant's calls were placed to a telephone number assigned to a cellular telephone
4 service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §
5 227(b)(1).

6 15. Defendant never received Plaintiff "prior express consent" to receive calls using an
7 automatic telephone dialing system or an artificial or prerecorded voice on his cellular
8 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

9 16. On or about February 6, 2017, at or around 2:06 p.m. Pacific Standard Time, Plaintiff
10 called into Defendant's company at phone number (800) 955-6600. Plaintiff spoke with
11 Defendant's female representative "Kanisha" and requested that Defendant cease calling
12 Plaintiff's cellular phone.

13 17. During the conversation, Plaintiff gave Defendant his social security number to assist
14 Defendant in accessing his account before asking Defendant to stop calling his cell phone
15 regarding all her accounts.
16

17 18. Plaintiff revoked any consent, explicit, implied, or otherwise, to call his cellular telephone
18 and/or to receive Defendant's calls using an automatic telephone dialing system in his
19 conversation with Defendant's representative on February 6, 2017.

20 19. Despite Plaintiff's request to cease, Defendant continued to place collection calls to
21 Plaintiff through June 12, 2017.

22 20. Despite Plaintiff's request that Defendant cease placing automated collection calls,
23 Defendant placed at least Eighty-Five (85) automated calls to Plaintiff's cell phone.
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FIRST CAUSE OF ACTION
NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227

21. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-20.

22. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

23. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B).

24. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT
47 U.S.C. § 227 et. seq.

25. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-20.

26. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

27. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

28. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, ALBINO GONZALES, respectfully requests judgment be entered against Defendant, CAPITAL ONE BANK (USA), N.A. for the following:

FIRST CAUSE OF ACTION

29. For statutory damages of \$500.00 multiplied by the number of TCPA violations alleged herein, \$42,500.00;

30. Actual damages and compensatory damages according to proof at time of trial;

SECOND CAUSE OF ACTION

31. For statutory damages \$1,500.00 multiplied by the number of TCPA violations alleged herein, \$127,500.00;

32. Actual damages and compensatory damages according to proof at time of trial;

ON ALL CAUSES OF ACTION

33. Actual damages and compensatory damages according to proof at time of trial;

34. Costs and reasonable attorneys' fees;

35. Any other relief that this Honorable Court deems appropriate.

JURY TRIAL DEMAND

36. Plaintiff demands a jury trial on all issues so triable.

RESPECTFULLY SUBMITTED,

DATED: October 13, 2017

/s/ Ibrahim Muhtaseb
ATTORNEY FOR PLAINTIFF

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